

1 CIVIL DISTRICT COURT
2 PARISH OF ORLEANS
3 STATE OF LOUISIANA
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7 GLORIA SCOTT AND *
8 DEANIA JACKSON *
9 * NO. 96-8461
10 VERSUS * DIVISION "I"
11 * SECTION 14
12 THE AMERICAN TOBACCO *
13 COMPANY, INC., ET AL. *
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19 Transcript of proceedings before The
20 Honorable Richard J. Ganucheau, Judge Pro Tempore,
21 Civil District Court, Parish of Orleans, State of
22 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
23 70112, commencing on June 18, 2001.
24
25

26 * * * * *
27 Monday Afternoon Session
28 March 24, 2003
29 2:25 p.m.
30 * * * * *
31
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1 I N D E X

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WITNESS: PAGE

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4 WILLIAM EMORY BROOKS, M.D.

5 DIRECT EXAMINATION BY MR. BRUNO..... 16859

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1 P R O C E E D I N G S
2 (In open court outside the presence of
3 the jury, but in the presence of William
4 Brooks Emory, M.D.)
5 THE LAW CLERK:
6 All rise. Recess is over. Court will
7 come to order. Please be seated.
8 THE COURT:
9 Please be seated.
10 THE COURT:
11 Before the luncheon recess, I heard
12 argument on two motions filed by plaintiff
13 counsel: The first is entitled "Plaintiffs'
14 Motion to Restrict Questioning of Class
15 Representatives." And the second is entitled
16 "Motion in limine Regarding Class
17 Representatives."
18 And I intend to rule on the issues
19 raised in both of those motions. I've, in
20 effect, treated them together and the
21 defendants have responded basically to both
22 of those motions in their argument.
23 I note that Mr. Wittmann has indicated
24 that no questions will be asked about the
25 juvenile adjudication of Ms. Jackson -- in
26 Ms. Jackson's history. And that the
27 defendants do not intend to ask any questions
28 about the use of marijuana.
29 I take that as eliminating the necessity
30 for rulings on those two issues by me?
31 MR. WITTMANN:
32 That would be correct, Your Honor.

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1 THE COURT:
2 Thank you.
3 So I will then rule on areas of
4 questions that were presented in the motions.
5 And as to those rulings, I'm guided by the
6 latest opinion of the Louisiana Supreme Court
7 in this case, Justice Kimball's opinion --
8 THE SPECIAL MASTER:
9 November 15th.
10 THE COURT:
11 -- November 15th. Thank you, Mr.
12 Gianna.
13 And as regards that opinion, to the
14 extent that that opinion conflicts with Trial
15 Order Number 7, I state for the record that I
16 recognize that the Supreme Court opinion is
17 the authority and it overrules Trial Order
18 Number 7 where the two are in conflict.
19 I will not allow questions of these
20 class representatives having to do with

21 individualized issues of prescription,
22 individualized issues with regard to the
23 effect of nicotine, individualized reasons
24 for either starting smoking or stopping
25 smoking, any questions of -- regarding the
26 treatment of Ms. Jackson's lung cancer --

27 It is Ms. Jackson?

28 MR. WITTMANN:

29 Ms. Scott.

30 THE COURT:

31 Ms. Scott, excuse me.

32 No treatment regarding any obstetrics or
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1 gynecological treatment of either of the
2 class representatives or any history of
3 termination of pregnancy by either one of the
4 class representatives, and no questions of
5 either class representative with regard to
6 any treatment for psychiatric disorders or
7 depression unless it is specifically tied to
8 their smoking habit or attempts to stop
9 smoking.

10 I will allow questions with regard to
11 religious affiliations of the individual
12 class representatives, their individual
13 knowledge of cigarette advertising, and their
14 individual awareness of the addiction issue.

15 I don't have a judgment prepared to
16 sign, but that is the ruling. And I would be
17 guided by the transcript to prepare and issue
18 the judgment, which I'll do whenever I'm able
19 to do so.

20 The next order of business, Mr. Bruno
21 tells me that he can proceed with the
22 qualifications of Dr. Emory before the jury.
23 Is that correct, Mr. Bruno?

24 MR. BRUNO:

25 Yes, Judge.

26 THE COURT:

27 All right. Anything for the record
28 before we call the jury in by plaintiffs'
29 counsel?

30 MR. BRUNO:

31 Russ?

32 MR. RUSS HERMAN:

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1 No, Your Honor.

2 THE COURT:

3 Anything for the record before we call
4 the jury by defense counsel?

5 MR. WITTMANN:

6 I'm sorry, Your Honor. I was talking to
7 Mr. Belasic. What was your question?

8 THE COURT:

9 Anything for the record before we call
10 the jury in to commence with the
11 qualifications of Dr. Emory?

12 MR. WITTMANN:

13 No, Your Honor.

14 THE COURT:
15 Bring the jury in, please.
16 (Whereupon the jury joins the
17 proceedings at this time.)
18 THE COURT:
19 Recess is over. Please be seated,
20 ladies and gentlemen.
21 Dr. Emory, you're still under oath.
22 THE WITNESS:
23 Yes, sir.
24 DIRECT EXAMINATION
25 BY MR. BRUNO:
26 Q. Judge Ganuchea, ladies and gentlemen of the
27 jury, this is Dr. Brooks Emory of the Ochsner
28 Foundation Hospital.
29 Dr. Emory, would you please share with the
30 jury where it was that you obtained your medical
31 school degree?
32 A. Tulane University School of Medicine.
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1 Q. And in what year, sir?
2 A. In 1968, I graduated.
3 Q. All right. And where did you do your
4 internship?
5 A. I did a rotating internship in Dallas, Texas
6 at the Methodist Hospital.
7 Q. Okay. And your residency?
8 A. I came back to New Orleans and did two years
9 of internal medicine training at the Ochsner Clinic.
10 And then I went into specialty training.
11 Q. All right. Did you do a fellowship?
12 A. I did. I did a fellowship at the Ochsner
13 Clinic in pulmonary medicine from '71 to '72. And
14 then I briefly went on the staff for a period of
15 nine months. And then I took a year and went to
16 Montreal, Canada. I did a basic research in
17 pulmonary physiology at the Royal Victoria Hospital,
18 Meakins Christie Laboratory, which is part of McGill
19 University.
20 Q. Are you Board certified in any specialties?
21 A. I'm Board certified in internal medicine,
22 pulmonary medicine and critical care medicine.
23 Q. All right. Now, today as we speak, you have
24 a clinical practice?
25 A. Yes, sir.
26 Q. Tell the jury just generally what is a
27 clinical practice.
28 A. I'm the type of doctor you go see if you have
29 a problem with your lungs. Basically, I have a
30 clinic. And I saw last year approximately 2,500
31 people in the office. Plus, every two weeks I run
32 the hospital service where we see the consultations,
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1 perform the procedures we call bronchoscopes. And
2 maybe twice a year, we take a two-week rotation in
3 the Intensive Care Unit.
4 So, basically, I'm the type of doctor
5 you would see if you went to the hospital and said,
6 "I'm sick."

7 Q. All right. Now, Dr. Emory, you were
8 President of the Orleans Parish Medical Society?
9 A. Yes.
10 Q. And that was when?
11 A. In 1990.
12 Q. And are you a member of the Louisiana State
13 Medical Society?
14 A. I was then, yes, sir.
15 Q. Are you a member of the American Medical
16 Association?
17 A. I was then. We're no longer members right
18 now.
19 Q. All right. The Southern Medical Association?
20 A. No longer.
21 Q. Okay. The American Thoracic Society?
22 A. Thoracic Society. I am currently.
23 Q. All right. Do they publish any publications
24 which are --
25 A. The journal that we use as our educational
26 journal is the American Review of Respiratory
27 Diseases.
28 Q. All right. And are you a member of the
29 American College of Physicians?
30 A. Yes, sir.
31 Q. And are you a member of the American College
32 of Chest Physicians?

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1 A. Yes, sir, I am.
2 Q. And how about the College Committee on Fungal
3 Diseases?
4 A. Well, that is a subcommittee. When you
5 belong to the American College of Chest Physicians,
6 you choose certain things that you're interested in.
7 That would be one, yes, sir.
8 Q. All right. And have you published any
9 papers?
10 A. Yes, sir.
11 Q. About 18, it looks like?
12 A. Eighteen or 19, yes, sir.
13 Q. The bulk of your time, Doctor, is spent doing
14 what?
15 A. Taking care of sick people.
16 Q. How much of your day do you spend actually
17 seeing patients and treating patients?
18 A. Well, this morning I started my day at a
19 conference at 7:15 where we review the material from
20 the bronchoscopies or surgeries that were done last
21 week.

22 We use this for two purposes. One is we
23 use it as an educational purpose with the doctors in
24 training; and the other thing, it's a peer review.

25 We explain what we did, it takes us to
26 our decision-making process, why we did a
27 bronchoscope. We then review with a pathologist,
28 who's there as part of our team, what we found. We
29 then discuss with the other doctors present, one is
30 a radiation oncologist, a man who would treat with
31 radiation therapy; one is a thoracic surgeon; and
32 more likely than not, if he got involved in the

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1 case, we would see the specimen he would remove at
 2 surgery; and also present would be an oncologist who
 3 would, if the patient was not benefited by surgery
 4 or if we felt was not a candidate for surgery, would
 5 discuss the options for treatment with oncology
 6 medicines for whatever lung disease we were
 7 treating.

8 So this is -- that was at 7:30. Then I went
 9 to my office and began seeing patients.

10 Q. All right. Now, Dr. Emory, do you do
 11 surgery? I mean, is that part of what you do in
 12 treating patients?

13 A. No, I don't operate. I do a procedure called
 14 a bronchoscope where we pass a lighted instrument
 15 into your lung. We give you sedation, we don't hurt
 16 you, and that's the most invasive thing I do to a
 17 patient.

18 Q. Dr. Emory, in connection with surgeries that
 19 are performed at the clinic or at the hospital, I
 20 should say, in connection with respiratory diseases,
 21 do you have any role whatsoever?

22 A. Yes, sir.

23 Q. All right. Would you please explain to the
 24 jury what is your role in connection with surgical
 25 intervention for pulmonary diseases?

26 A. Well, basically, it's pretty much the same
 27 thing. A patient in our setup is referred to the
 28 pulmonary section, which I'm one of the five
 29 doctors. And if you have an abnormality on your
 30 X-ray, there is a certain degree of anxiety what
 31 this may be.

32 My responsibility is to, as best I can,
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1 determine what the problem may be. That may lead me
 2 to a procedure we call a bronchoscope, that may lead
 3 me to doing what's called a fine-needle aspiration
 4 with the help of the people in radiology.

5 With the information we get, then we
 6 make a determination: Is this something that needs
 7 a surgeon? You may find a process that doesn't need
 8 a surgeon. You may need an antibiotic or it may be
 9 something that needs no treatment at all once you
 10 know what you're dealing with.

11 If we find someone who has a malignancy
 12 on our assessment, my job -- and I tell this to the
 13 patient up front -- is to find a reason that you
 14 don't see the surgeon.

15 Q. I'm sorry. Your job is to figure out a
 16 reason not to have surgery?

17 A. Yes, sir.

18 Q. Would you explain that to the jury, please?

19 A. Well, basically, the track record with lung
 20 cancer is so dismal. Thirteen to 15 percent of
 21 people who have lung cancer live five years. So we
 22 know from past experience, dating back even to the
 23 days of the 1930s when Dr. Alton Ochsner, Sr. began
 24 doing surgery, that surgery is beneficial early on.
 25 Unfortunately, this disease tends to move into other
 26 parts of the body early on.

27 So my job -- and I tell the patients, as

28 I said earlier -- is to find a reason you can't be
29 operated on. As I explained, I put obstacles or
30 hurdles in your way. My job is, A., to see what
31 your general health is; B., does your lung function
32 allow you to have good enough reserve if we take a
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1 piece of your lung out that you will survive and
2 have a decent life? Because most of the people who
3 have a disease of lung cancer, unfortunately, have
4 also other diseases: heart disease, emphysema and
5 bronchitis.

6 The other things I do is to make sure,
7 as best we can, with CAT scans, PET scans and
8 laboratory work, is there evidence that the disease
9 spread beyond where the surgeon can remove it? We
10 do not get any great kudos if you operate and say,
11 "Gee, we opened and shut." That is a failure on my
12 part. So my job is to, as best I can, to sort out
13 the patient that has a chance for curative
14 resection.

15 Q. All right. Dr. Emory, you've been treating
16 patients now for how many years?

17 A. I went into practice after my final training
18 in Montreal on July 1st, 1974.

19 Q. So it's, gosh, it's been --

20 A. Approximately 29 1/2 years.

21 Q. Twenty-nine and a half years you've been
22 treating patients. So I'm curious. How does a
23 physician like you stay up-to-date with current
24 thinking, current practices, current technologies
25 in your field of specialty?

26 A. Well, one of the things you have is you have
27 house staff. Your doctors in training keep you on
28 the ball. You have to be as well-read as they are.
29 And we spend our lives asking them hard questions,
30 so I have to read.

31 We participate in conferences, like the
32 morning conference I did this morning. Plus, we
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1 participate in national meetings and we're being
2 educated. My education and a medical education is
3 considered half -- 50 percent obsolete seven years
4 after you leave med school.

5 What I know today, 29 years after I
6 graduated med school, we weren't even talking about.
7 So if you don't educate yourself, if you don't keep
8 current, if you don't challenge yourself
9 intellectually, you're not very good to your
10 patients.

11 Q. All right. Doctor, so what do you read?
12 What do you read? These articles in this Chest
13 magazine and the Journal of the American Medical
14 Association, do you read things like that?

15 A. That and the New England Journal of Medicine;
16 you read the American Review of Respiratory
17 Diseases, a member of the American Thoracic Society;
18 you read Chest. And then what you do is you learn
19 -- Now we have CD-ROMs, you can pull up a whole
20 topic. And we'll talk about a topic with the

21 residents. And the stimulation to teach the
22 residents makes you stay current.

23 MR. BRUNO:

24 All right. Could we, Carl, please call
25 up -- this is a Defendants' Exhibit,
26 AIW-000527. Would you put that on the
27 screen?

28 Judge, this has been offered, introduced
29 and received in evidence by the defendants.

30 THE COURT:

31 Agreed?

32 MR. BELASIC:

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1 Agreed.

2 MR. BRUNO:

3 May we publish?

4 THE COURT:

5 You may publish.

6 EXAMINATION BY MR. BRUNO:

7 Q. Dr. Emory, if you could look at the screen in
8 front of you, this is the Journal of the American
9 Medical Association. Do you read this journal in
10 order to keep up-to-date with regard to modern
11 technologies and the like?

12 A. Yes, sir.

13 Q. All right. Now, this is 1991. This is some
14 twelve years old.

15 A. Yes, sir.

16 Q. But you were reading it back in 1991?

17 A. We have been reading it since we were in med
18 school in 1964.

19 MR. BRUNO:

20 All right. May we publish Page 2, Your
21 Honor?

22 THE COURT:

23 You may publish it.

24 MR. BRUNO:

25 Now, this was not shown to the jury.

26 This is Page 2. And this has a list of the
27 articles that are in this particular journal.

28 And, if we could, can we, Carl, can we
29 blow up -- I don't know -- the first three or
30 four articles for the jury so that we can see
31 the kinds of articles that appear in this
32 journal?

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1 EXAMINATION BY MR. BRUNO:

2 Q. All right. Let's see, Doctor, if you would
3 follow along with me, the first article regards
4 "Transdermal Nicotine --

5 MR. LONG:

6 Objection, Your Honor. May we approach?

7 THE COURT:

8 You may approach.

9 MR. SHOLES:

10 Can the exhibit be taken down during the
11 conference, Judge?

12 THE COURT:

13 Excuse me?

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1 him that he reads this article, this journal.
2 Now he's putting up a bunch of things on the
3 cigarette advertising --
4 THE COURT:
5 Does this go to his expert
6 qualifications?
7 MR. BRUNO:
8 Absolutely.
9 What I'm trying to demonstrate, Judge,
10 is that part of what these physicians learn
11 and what they learn and what they're
12 up-to-date on, if you would have seen the
13 titles, it talks about advertising to
14 children and the like.

15 All of this goes to directly what he has
16 learned and why he, in the course of treating
17 patients and preventing injury to others,
18 lectures to children, lectures to his
19 patients, lectures to other doctors, and this
20 is where he got his information.

21 THE COURT:
22 Does that go to his qualifications?

23 MR. BRUNO:

24 Yes ..

25 THE COURT

26 I don't know what your tender is going
27 to be.

28 MR. BRUNO:

29 As an expert in prevention -- I should
30 have read it to you.

31 THE COURT:

32 I'll let you go a little further, but we
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1 are limited strictly to things that bear on
2 his qualifications.

3 MR. LONG:
4 Your Honor, there's nothing about
5 advertising and its influence on children,
6 nothing, in his expert report.

7 MR. BRUNO:
8 I'm not going to talk about advertising.
9 I'm talking about these are the kinds of
10 articles that a physician reads in order to
11 get up-to-date in order to understand what to
12 tell --

13 THE COURT:
14 I'll give you a little latitude but not
15 much.

16 MR. BRUNO:
17 Okay. Thank you, Judge.

18 THE COURT:
19 If that's an objection, it's overruled
20 for the time being.

21 (Whereupon the bench conference is
22 concluded at this time.)

23 MR. BRUNO:
24 May we publish Page 2 again?

25 THE COURT:
26 You may publish it.

27 EXAMINATION BY MR. BRUNO:

28 Q. All right. Doctor, I just want you to look
29 at these titles. Just take any one of them. "RJR
30 Nabisco's Cartoon Camel Promotes Camel Cigarettes to
31 Children."

32 What I need to understand is, what I'd
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1 like the jury to understand is why on earth would
2 these subjects be relevant to a physician who treats
3 patients with respiratory diseases all day long?

4 MR. WITTMANN:
5 Objection, Your Honor. Beyond the
6 scope.

7 THE COURT:
8 Overruled. Answer the question if
9 you're able to.

10 A. I think that the line underneath the date
11 says it all, sir. That is the mission statement of
12 what we're doing as a physician: "To promote the
13 science and art of medicine and the betterment of
14 the public health." Basically, this is what they're
15 drawing attention to, how to promote better health.

16 MR. BRUNO:
17 Could we go to Page 4?
18 And, Your Honor, may I publish?
19 THE COURT:
20 You may publish that one.

21 EXAMINATION BY MR. BRUNO:
22 Q. All right. Now, in addition to educating
23 physicians on a variety of topics that relate to
24 cigarette smoking, Counsel for RJR pointed out that
25 this was an advertisement which, of course, it says
26 what it says.

27 May we publish the next page?
28 To actually participate in, as they call it,
29 stopping one of America's leading killers.

30 THE COURT:
31 You may publish it.
32 MR. BRUNO:

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1 Oh, I'm sorry. Let's publish it.

2 EXAMINATION BY MR. BRUNO:

3 Q. To participate in stopping one of America's
4 leading killers. And the challenge here was for
5 physicians to talk to their patients about the use
6 of tobacco.

7 Now, do you remember, Dr. Emory, back in
8 1991, 1990 or 1992 an initiative by the American
9 Medical Association to persuade physicians to simply
10 talk to their patients about the use of cigarettes?

11 A. Yes, sir.

12 Q. Can you tell the jury, if you know, why on
13 earth would what a physician says to a patient be
14 any more valuable than what any guy off the street
15 might tell a smoker about smoking?

16 MR. SCHNEIDER:

17 Objection, Your Honor. Preemption.

18 THE COURT:

19 Overruled. Answer the question if
20 you're able to.

21 A. Well, it became apparent in the late eighties
22 and early nineties that doctors were too passive;
23 they were not addressing the issue of public
24 awareness to smoking. And, basically, as this
25 article and the whole Journal of the American
26 Medical Association, that edition, is devoted to
27 reaching the doctors who work in the United States
28 to say, "Hey, we know that if you will speak to your
29 patient, that you will affect 5 to 7 percent of your
30 patient grouping to quit smoking."

31 It was an initiative to say, "Hey, docs, wake
32 up, do the easiest thing. Ask the patient: 'Do you
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1 smoke?' and help them quit smoking."

2 Because the premise is that people, in 1990,
3 anyway, respected the doctor's opinion. And just
4 that simple initiative had a great bearing on
5 getting people to say, "Hey, wait a minute, my
6 doctor's telling me to quit smoking and maybe it's
7 bad for me." And so, as a consequence, some people
8 stopped smoking.

9 MR. BRUNO:

10 All right. May we have, Carl, on the
11 Judge's screen and opposing counsel's screen
12 Scott Plaintiffs' Exhibit Number 15.04.

13 And may we publish?

14 MR. LONG:

15 Yes. No objection.

16 THE COURT:

17 You may publish it.

18 EXAMINATION BY MR. BRUNO:

19 Q. All right. Doctor, can you tell the jury
20 what this is? This is, obviously, a pamphlet. But
21 what's it about?

22 A. This is an invitation to participate in a
23 learning session for me, and other doctors in New
24 Orleans who are interested, in how to talk to
25 doctors to better promote nonsmoking.

26 Q. Did you teach at this conference?

27 A. I was taught at that conference. And then

28 it's like a network. Then we went further out into
29 the community and taught.

30 Q. All right. How many -- You've actually
31 taught other physicians about the business of
32 talking to their patients about the use of
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1 cigarettes?

2 A. Yes, sir.

3 MR. BRUNO:

4 All right. You can take that down.
5 Your Honor, in connection with the
6 testimony that you've just heard, we would
7 offer Dr. Brooks Emory as an expert in
8 internal medicine, pulmonary diseases and
9 critical care medicine, which would include
10 the diagnosis and treatment of pulmonary
11 diseases associated with cigarette use, and
12 the diagnosis and treatment of nicotine
13 addiction.

14 We also tender Dr. Emory as an expert
15 regarding physician and patient counseling
16 and techniques for smoking cessation as well
17 as the prevention and health maintenance of
18 individuals, particularly as it relates to
19 the use of cigarettes.

20 THE COURT:

21 Any cross on qualifications by defense
22 counsel?

23 MR. LONG:

24 Let me digest the tender here for a
25 second, if I could, please.

26 No cross. But I do have an objection.
27 The objection to the tender is on the issue
28 of diagnosis --

29 THE COURT:

30 Just a moment. I'm getting the tender
31 printed.

32 No cross on qualifications but you

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1 object to the tender, Mr. Long?

2 MR. LONG:

3 We object to the tender on the diagnosis
4 of nicotine addiction and treatment of
5 nicotine addiction.

6 THE COURT:

7 Mr. Bruno?

8 MR. BRUNO:

9 I can clear that up with a few more
10 questions, Judge.

11 EXAMINATION BY MR. BRUNO:

12 Q. Doctor, as part of what you do in the
13 treatment of individuals with respiratory diseases,
14 do you occasionally have the need to diagnose
15 nicotine addiction?

16 A. I certainly do. The interesting thing is we
17 actually have a CPT code. That is how you code a
18 visit. And one of the boxes you can check is
19 nicotine addiction. So nicotine addiction is part
20 and parcel of dealing with a patient who has lung

21 disease. It would be synonymous or similar to
22 having a person who has liver disease and
23 alcoholism. If you don't treat the alcoholism, you
24 can't treat the liver disease.

25 Q. Let me just, for my sake, if nobody else's,
26 the doctor -- most doctors today, they have that
27 long sheet of paper with all the codes on it and all
28 the different things that a doctor can do on the
29 visit?

30 A. That is correct.

31 Q. And that's what you're referring to as the --

32 A. That's how you generate a charge ticket on an
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1 insurance form.

2 Q. All right. Does the form have a name?

3 A. Well, it's called CPT coding, CPT coding.

4 It's a government thing. So if I say something is a
5 pneumonia, it has a code number. So the government
6 or your insurance company reimburses you by that
7 diagnosis.

8 Q. All right. So do I gather that these forms
9 have on them diagnoses which occur often?

10 A. Yes.

11 Q. And they occur so often that they put them
12 on the form so you don't have to write out the
13 diagnosis; correct?

14 A. That is correct.

15 Q. So the fact that there is an actual code for
16 nicotine addiction, can we conclude from that that
17 there are a great number of people who are
18 ultimately diagnosed as nicotine addicted?

19 A. Yes, sir.

20 Q. And is it a necessary inquiry for you to make
21 in connection with the treatment of individuals who
22 come to you with respiratory illness?

23 A. Yes.

24 One of the things on our forms in the entry
25 place is: Is a patient a smoker? "Yes," "No" or
26 "Previously." And the number of cigarettes.

27 Q. Have you had any training with regard to the
28 diagnosis of nicotine addiction?

29 A. Well, if you will, if I would say self-taught
30 in the sense that when the Nicoderm patch first
31 became available, it was a prescription drug. I
32 spoke for Merrell Dow to pharmacists and doctors
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1 relative to the nicotine patch. That went off the
2 prescription list and is now across the counter.
3 But that was considered a drug because nicotine, in
4 the eyes of the FDA, is a drug.

5 So we had to give a lecture about how to give
6 the patches, the side effects of the patches, and
7 how we would manage with nicotine addiction. And
8 every talk had at least half the time talking about
9 addictive behavior.

10 Q. These pieces of paper with the codes on them,
11 was that a standardized form that all physicians who
12 treat pulmonary diseases have?

13 A. Yes, sir.

14 Q. All right. So all physicians have the
15 opportunity to check off that little box that says
16 nicotine addiction?
17 A. And you also have another box you can check
18 off called consultation or consulting time. You can
19 book consulting time to address that issue.
20 Q. All right. You mean the issue of the use of
21 cigarettes?
22 A. Yes. And spending time speaking to the
23 patient and call yourself consulting on that issue.

24 MR. BRUNO:
25 All right. Judge, we believe Dr. Emory
26 is well-qualified to talk about the nicotine
27 addiction.

28 THE COURT:
29 Anything else, Mr. Long?
30 MR. LONG:
31 Same objection.
32 THE COURT:

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1 I believe the doctor is qualified by
2 training and experience to offer expert
3 opinions in the area of treatment of
4 nicotine -- diagnosis and treatment of
5 nicotine addiction. So the objection will be
6 overruled.

7 And the witness will be qualified as an
8 expert in internal medicine, pulmonary
9 diseases and critical care medicine,
10 including diagnosis and treatment of
11 pulmonary diseases associated with cigarette
12 use, and the diagnosis and treatment of
13 nicotine addiction.

14 He will also be recognized as an expert
15 in physician and patient counseling and
16 techniques for smoking cessation and
17 prevention and health maintenance of
18 individuals, particularly as it relates to
19 the use of cigarettes.

20 MR. BRUNO:
21 All right. Your Honor, if you please,
22 may we call up for the Judge and opposing
23 counsel WE-67? Carl, I believe you've told
24 me this is Slide Number 22.

25 Judge, may we publish?

26 MR. LONG:

27 It's been in before, Judge. No
28 objection.

29 THE COURT:
30 No objection? You may publish it.

31 EXAMINATION BY MR. BRUNO:

32 Q. Let me apologize in advance. You've heard
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1 and seen this before. I asked these same questions
2 to Dr. Lavie, we're here talking about the pulmonary
3 diseases, so we're going to ask these same questions
4 from Dr. Emory with regard to these diseases of COPD
5 and lung cancer. And I'm going to be as brief as I
6 possibly can.

7 First of all, can we have the part of the
8 definition that relates to smoking cessation?
9 All right. Doctor, do you, from time to
10 time, prescribe or order smoking cessation for your
11 patients?
12 A. We do in several forms, yes.
13 Q. All right. Now, what I want you to do is to
14 assume for the purposes of these questions that this
15 definition defines your patient, okay?
16 A. All right.
17 Q. All right. Now, so we know first that it's a
18 Louisiana resident. Is that something that you can
19 readily ascertain from interview or --
20 A. They usually will 'fess up that they're from
21 Louisiana.
22 Q. Okay. And do you take a smoking history?
23 A. Everyone has a smoking history that comes to
24 my office, yes, sir.
25 Q. Why do you take a smoking history?
26 A. Because a smoking habit is a high-risk
27 profile. And that's my business.
28 Q. Do you find, Doctor, that people lie about
29 their use of cigarettes?
30 A. I would not use the word "lie." But people
31 tend to underestimate their use of cigarettes and
32 alcohol and overstate their use of sex. So you just
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1 sort of learn, you figure this out over time.

2 Q. So what, if anything, do you do, Doctor, to
3 ascertain -- I mean, it is necessary to get accurate
4 information about a person's smoking history so that
5 you can treat them; right?

6 A. That is correct.

7 Q. All right. What, if anything, do you do in
8 the context of treating a patient to ascertain that
9 your patient is giving you accurate and reliable
10 information about their use of cigarettes?

11 A. Well, you hope you build a trust and what
12 they confide in you is accurate. We don't whip
13 anybody.

14 Q. All right. Do you have any difficulty,
15 Doctor, in understanding what the word "smoker"
16 means?

17 A. "Smoker," to me, would assume that if someone
18 is picking up a cigarette, lighting it and inhaling.

19 Q. All right. Does it matter to you how many
20 cigarettes they've smoked?

21 A. No, sir.

22 Q. Does it matter if they smoked 50 years ago
23 and stopped?

24 A. No.

25 It would make a difference -- It may be
26 relevant to if they had an abnormality on a lung
27 test and were trying to explain what was it,
28 obstructive or restrictive. But it's important in
29 your judgment, duration and intensity and number of
30 cigarettes when smoked, yes.

31 Q. All right. Now, Doctor, do you, in your
32 evaluation of your patients, do you differentiate as
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1 between the brands of cigarettes?
2 A. No, sir.
3 Q. I mean, does it matter to you?
4 A. No, sir.
5 Q. Does it matter if a person smoked a Kool
6 versus a Pall Mall versus a -- Does it matter at
7 all?
8 A. There's no such thing as a safe cigarette,
9 sir.
10 Q. All right. So, in your view, a cigarette is
11 a cigarette?
12 A. Yes, sir.
13 Q. Now, it says, in this definition, that your
14 patient, in order to be in this program, has to
15 desire to participate. Do you see that there?
16 A. Yes, sir.
17 Q. Can you tell this jury whether or not this
18 desire to participate business is at all significant
19 in the context of smoking cessation?
20 A. We know from experience that 70 percent of
21 smokers would like to quit. So most of the people
22 who smoke would like to be able to give up the habit
23 of smoking. So they often express an interest in
24 how to quit smoking. They are embarrassed by the
25 fact that they've tried and failed, tried and
26 failed.
27 And one of the things one has to do as a
28 treating physician is to counsel the person that
29 most people do not successfully quit on the first
30 try. And you reinforce the positives and you go
31 back and do it again and again.
32 Q. Dr. Emory, you've already told this jury
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1 that, first, the American Medical Association